Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of | ) | |
| Closed Captioning of Video Programming | ) | CG Docket No. 05-231 |
| Telecommunications for the Deaf, Inc. Petition for Rulemaking | ) | |

# REPLY COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

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# REPLY COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

The Motion Picture Association of America, Inc. ("MPAA") hereby submits these Reply Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1] In its initial comments, MPAA discussed why imposing non-technical quality standards would be unnecessary and counter-productive. This view has been widely substantiated by others in the video programming industry.[2]

In particular, MPAA detailed why a uniform, non-technical quality standard for captioning would be impractical and could not be imposed without significant costs to captioning quality. Providing effective, quality captioning involves necessary selections and omissions, and requires flexibility and sensitivity to

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[1] *See* Notice of Proposed Rulemaking, FCC 05-142, CG Docket No. 05-231 (rel. July 21, 2005).

[2] *See* Comments of HBO at 11; Comments of NAB at 11; Comments of NCTA at 4; Comments of USTA at 5-7.

artistic choices. Many factors affect what is ultimately captioned, including but not limited to: inherent technical limitations, the difficulties of rendering slang, jargon and half-utterances, the preservation of the artistic integrity of a scene, the speed of dialogue, and the occurrence of simultaneous sounds. The hundreds of such choices and tradeoffs that face a captioner over the course of an hour of a video program defy the application of a rigid rule of completeness or accuracy. A uniform quality standard based on a rigid definition of an "error" would detract from the flexibility necessary to providing effective captioning. A quality standard that attempted to take into account every relevant factor would topple under its own complexity, and would still not be able to measure whether or not the captioning truly captures the thrust of what is occurring in sound during a scene.

Several supporters of non-technical quality standards have unwittingly demonstrated how unworkable such a standard would be. They have done so in two ways: by acknowledging, to different extents, the inherent limitations of captioning, and by proposing standards that are fatally broad and patently impractical.

In its comments, the National Captioning Institute ("NCI") acknowledges that verbatim captioning would not be possible for a video program with rapid-fire dialogue.[3] For such cases, NCI recommends: "Quality standards by the FCC should appropriately take into account the differences between programming and the specified audience, when measuring for quality."[4] Presumably, this would entail having a different standard for a program with rapid-fire dialogue versus a program

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3 *See* Comments of NCI at 3-4.

4 *Id.* at 4.

with regular-paced dialogue. Yet any line drawn between these two categories would be somewhat arbitrary, on one side requiring verbatim accuracy, and on the other side allowing words to be dropped. Moreover, the pace of dialogue often changes within a program, sometimes moment by moment or scene by scene. To deal fairly with just this one factor, a quality standard would have to require that the speed of the dialogue be measured at any given moment in determining the accuracy of the corresponding captioning. No quality standard would likely be able to take into account this level of complexity. If it did, it would be onerous to apply.

Another proponent of government-imposed, non-technical quality standards, the Accessible Media Industry Coalition ("AMIC"), describes the vast amount of sound information that a captioning provider must choose from in determining what to caption.[5] AMIC also notes: "Because of … technical limitations inherent in the [captioning] technology, not every word will always be able to be captioned."[6] AMIC concludes: "The expert captioner knows when they [*sic*] can stray from this rigid recipe [of captioning everything] without undermining the mission."[7] But how will the Commission's proposed quality standard take into account when, exactly, it is appropriate to caption without complete accuracy? Apart from obvious examples of inaccuracies such as spelling and punctuation mistakes,[8] AMIC does not offer a broad standard for accuracy that would be sensitive to the choices and omissions that an effective captioner makes. Moreover, in discussing a standard of

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5 *See* Comments of AMIC at 5-6 ("sound effects, music, speaker intonation … even silences").
6 *Id.* at 5.
7 *Id.* at 6.
8 *See id.* at 7.

completeness that would take into account non-verbal sounds, AMIC proposes the following: "Sounds (other than speech) that substantially affect the ability of the non-hearing person to understand the program must be conveyed."[9] The vagueness of this standard demonstrates the futility of a government-imposed standard for captioning. The best people in a position to know what will substantially affect understanding are the captioners and program providers themselves. Finally, AMIC also underscores the point made by NCI about the difficulty of captioning quick-paced dialogue: "Many factors affect the ability of the captioner to create accurate, timely, and complete captions…. [T]hese factors include the clarity of the audio and the speed of the speech or narration."[10]

In its comments, Media Captioning Services ("MCS") similarly acknowledges that "verbatim [captioning accuracy] is on occasion not possible to achieve because of conditions beyond the captioner's control, such as rapid speech, simultaneous conversations between people on air, and unfamiliar names or words which may be used during the broadcast."[11] In light of these limitations, MCS proposes a seemingly flexible standard of functional equivalence between audio and captioning. But the standard itself is at once overly simple and fatally vague: "Misspelled words, and *missing words which affect contextual accuracy* would be counted as errors."[12] MCS attempts a definition for "contextual accuracy": "If wrong words are used, or key words are missed which impact on the viewers [*sic*] understanding,

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9 *Id.*
10 *Id.* at 9.
11 Comments of MCS at 7.
12 *Id.* at 9 (emphasis added).

then contextually correctness [*sic*] has not been achieved, and the captioning would be, by definition, not functionally equivalent to the audio available to a hearing viewer."[13] As in the AMIC proposal, misspelled words are the easy case, but does the Commission want to be in the business of patrolling "contextual accuracy" so defined?

In its comments, the WGBH National Center for Accessible Media ("NCAM") urges that "some common-sense and simple standards" should be imposed, and that "setting and

monitoring clear measures of accuracy and errors [would not be] untenable or impractical."[14] Upon closer inspection, however, the standards that NCAM proposes are rigid, broad and vague, *e.g.*, "100% accurate transcription (text matching audio),"[15] "[i]dentification of nonverbal sounds, i.e. sound effects, music should be required."[16] These standards suffer from the same defects as those proposed by others.

In sum, the comments of NCI, AMIC, MCS, and NCAM offer a clear window onto the impossibility of formulating a workable quality standard beyond the most trivial requirements of correctly spelled words. To the extent these comments come to terms with the fact that complete accuracy is not only impossible but undesirable when it comes to providing effective quality captioning, the standards they propose are fatally vague. That is because the determination of what is the most

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13 *Id.* at 7.
14 Comments of NCAM at 7.
15 *Id.* at 8.
16 *Id.* at 10.

contextually accurate caption, or what will substantially affect viewers' understanding, is a subjective, expert choice made based on a range of factors and challenges, both artistic and technical.

As MPAA described in its initial comments, MPAA member companies will continue to meet the growing demand for quality captioning. The captioning providers with whom they partner will have increasing incentives to provide the best possible captioning. And if the captioning process retains its necessary flexibility, as captioning technology evolves the video programming industry will continue to develop best practices for captioning fast-paced dialogue, multiple background sounds, music, and everything else that is occurring in sound during a scene.

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.